

January 28, 2005

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45
Ex Parte Communication

Dear Ms. Dortch:

As the Commission considers the pending Joint Board Recommended Decision concerning the policies and procedures for designating eligible telecommunications carriers (ETCs) entitled to draw support from the Universal Service Fund, the undersigned parties jointly urge the Commission to adopt ETC designation criteria that are sufficiently rigorous and specific to ensure that universal service support is directed to carriers offering a truly “universal” telecommunications service offering throughout the designated service area.

The evidence in this proceeding plainly supports the need for the Commission to establish guidelines for regulators to use in determining whether a petitioner meets the applicable statutory requirements and whether the public interest would be served by designating the petitioner as an additional ETC in an area served by a rural telephone company.¹ In addition, recent developments show that the Commission must go further to ensure that reform of the ETC designation process will promote judicious use of the Universal Service Fund and help to restore the Fund to more secure financial footing.

Recent ETC designation orders ostensibly applying the Commission’s *Virginia Cellular* order reveal that the “interim” criteria adopted there have not succeeded as a screening mechanism. The criteria are being applied mechanically and with little attention to the underlying facts. For example, the pending Application for Review of the Nextel Partners ETC Order and related *ex parte* filings show that the Wireline Competition Bureau granted ETC status to Nextel Partners in all the requested service areas despite the fact that Nextel’s own coverage maps showed that it offered virtually no service in some of those areas; the build-out plans submitted to the Bureau showed no intention to construct facilities

¹ The Commission itself has already taken some steps in this direction by identifying factors to be considered in applying the public interest test in *Virginia Cellular* and *Highland Cellular*; the Federal-State Joint Board on Universal Service (Joint Board) recommended such action in the Recommended Decision; and numerous commenters on the Recommended Decision have supported this approach.

in the unserved areas; and the business plan the company communicated to the investment community did not include plans to provide comprehensive service in rural areas.² Based on this experience, it is clear that any criteria adopted by the Commission will succeed in ensuring a rigorous ETC designation process *only if* the criteria are *mandatory* and include *specific guidance* concerning how they should be applied. To accomplish this goal, we recommend that the Commission (1) expressly quantify the ETC eligibility criteria, and (2) specify the showing necessary to satisfy any public interest factors enumerated in the order.

Below is a summary of the eligibility criteria that have garnered broad support in the comments, along with associated requirements that the Commission should adopt to ensure that an applicant satisfies the criteria before ETC designation is granted. Strictly applying and enforcing these criteria will guarantee that the scarce resources of the Fund, made up of the contributions of telecommunications consumers nationwide, will be used to support the type of services that consumers expect from their principal telecommunications provider.

- I. ETC petitioner must demonstrate and certify its commitment to provide service throughout the designated service area to the same extent that service is provided by the current Carrier of Last Resort. The petitioner must make this showing in the petition process and must meet commitments concerning future deployments on an ongoing basis. ETC status should be revoked for carriers that fail to meet their commitments.
 - Petitioner must be providing service covering at least 75% of the designated geographic service area at the time it petitions for ETC status.
 - The ETC petition must include a detailed build-out plan, including completion deadlines, showing that the petitioner will extend its network to provide coverage throughout 100% of the designated geographic service area within one year after ETC designation.
 - Once designated, the ETC must achieve 100% coverage throughout the designated geographic service area, consistent with its build-out plan and the state requirements for a Carrier of Last Resort, within one year after ETC designation. At that point the CETC must comply with all state Carrier of Last Resort

² See, e.g., Rural LECs Application for Review of Nextel Partners ETC Order, CC Docket No. 96-45 (Sept. 24, 2004); Reply to Opposition to Application for Review, CC Docket No. 96-45, at 3 (Oct. 27, 2004); *Ex Parte* Letter from Mary Newcomer Williams, Counsel to TDS Telecommunications Corp., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 (Oct. 27, 2004).

obligations and be willing and able to serve the designated area as the sole Carrier of Last Resort.³

II. Petitioner must have adequate financial resources to serve the designated area.

- The ETC petitioner must submit financial statements or other evidence showing that it has adequate financial resources to make the capital expenditures necessary to implement its build-out plan and to meet its coverage requirement within the specified timeframe.
- *Pro forma* statements must show the extent to which the ETC petitioner will rely on universal service funding to support its business.

III. The ETC petitioner must offer a basic local service package at rates comparable to the incumbent wireline provider.

- The ETC petition must identify proposed calling plan(s) and demonstrate that the petitioner offers a basic local service package at rates that are comparable to those offered by the incumbent wireline provider.
- In assessing the CETC petition, the regulator may take into account differences in features between ILEC and CETC calling plans, such as a larger local calling area for the CETC, E911 capabilities offered by the ILEC, and per-minute CETC charges that apply to local as well as long distance calls. The regulator must analyze the value or discount that should be attributable to these feature differences and must affirmatively determine that the ETC petitioner offers a “universal service” package that provides basic local service at rates that are reasonable and comparable to the ILEC’s.

IV. Service must remain functional in emergencies.

- Petitioner must demonstrate that its network can function in emergencies to the same extent as other Carriers of Last Resort, which means that it can work without an external power source (with at least 8 hours of backup power throughout the service area), can re-route traffic around damaged facilities, and can handle spikes in traffic.

³ Every ETC must stand ready to serve as the only ETC in a designated service area under Section 214(e)(4) of the Communications Act, which permits any ETC to relinquish its designation as such in any area served by more than one ETC. 47 U.S.C. § 214(e)(4).

- V. Service must satisfy state service quality and universal service requirements.
- The ETC petitioner must demonstrate that it provides service quality at the same level as other Carriers of Last Resort, including providing clear and audible voice communications throughout its coverage area (and, by the deadline, throughout the designated service area); meeting applicable call connection, network reliability, and repair standards; and providing N11 services as required of incumbent providers under state or federal law.
 - Petitioner must comply with all relevant state service quality and universal service reporting requirements to the same extent as other Carriers of Last Resort.
- VI. The ETC petitioner must comply with applicable state consumer protection requirements.
- Petitioner must commit to comply with applicable state requirements, including rules relating to disconnection of service, customer deposits, billing, late fees, and complaints, to the same extent as other Carriers of Last Resort.
- VII. The ETC petitioner must demonstrate that the public interest would be served by designating an additional ETC in a rural service area.
- The public interest analysis must weigh the public benefits, throughout the designated service area, of the requested ETC designation against the potential costs to the Universal Service Fund. Any order granting ETC status in a rural service area must include a detailed description of the factual basis for the public interest finding.
 - Generalized assertions of the benefits of competition and mobility should not be sufficient to support the requisite public interest finding. Petitioner must provide carrier-specific information showing in detail how universal service support will be used to provide services that are better and more valuable than those currently available in the designated service area.
 - In conducting the public interest analysis, the regulator should be guided by a presumption that the public interest would not be served by designating additional ETCs in rural service areas.
- VIII. Ongoing review of ETC designation.
- Annual certification: A petitioner that is granted ETC designation must be required to certify, on an annual basis, that (1) it has satisfied any outstanding build-out requirements; and (2) it is operating in accordance with the representations in its petition and in compliance with applicable service quality

and consumer protection standards. The CETC should also be required to provide a statement describing how the public interest benefits cited in the ETC designation order are being realized in the designated service area. Finally, the CETC should be required to demonstrate, through an accounting, that it has used universal service funds only to support facilities and services used to provide service to rural, high-cost areas. This accounting requirement could be lifted once a support mechanism has been developed that compensates CETCs based on actual costs they have already expended in serving the supported areas.

- Audit rights: The FCC and USAC should retain the right to audit CETCs' use of universal service funds, and CETCs should be obligated to provide documentation concerning their use of universal service funds to the FCC or USAC upon request.

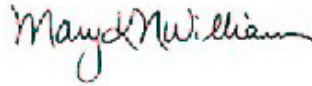
By adopting the foregoing criteria, the Commission would go a long way toward ensuring that the Universal Service Fund remains viable and continues to fulfill the statutory goal of ensuring that consumers in rural, high-cost areas have universal access to high-quality telecommunications services, comparable to those available in urban areas, at reasonable rates.

Respectfully submitted,

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